

Title	Small Claims: <i>Request to Amend Claim Before Hearing (Small Claims)</i> (new optional form SC-114)
Summary	The proposed optional form would allow a small claims party to request that the claim be changed before the hearing to amend parties, amount owed, or other amendments. The form also requires a declaration under penalty of perjury that the request was mailed to the other parties in the case, with optional additional notification by telephone, e-mail, or fax.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, (415) 865-7669, cara.vonk@jud.ca.gov
Discussion	<p>The proposed form would provide a method for seeking amendment of a small claims case before the hearing to modify the dollar amount, change the name of the defendant, add names of additional defendants, or make other changes such as factual corrections or amending the relief requested. The form is optional.</p> <p>The form would be useful for amending the defendant's name when the claim is against a business doing business under a fictitious name as provided under Code of Civil Procedure section 116.560. The section states, "plaintiff may request the court at any time, whether before or after judgment, to amend the plaintiff's claim or judgment to include both the correct legal name and the names or names actually used by the defendant." If the request is made after judgment, the court clerk must give notice of the motion to all affected parties at their last known address. (See Code of Civ. Proc. § 116.630.) A proposal for a possible separate post-judgment form is discussed at the end of this memorandum.</p> <p>The form also would be useful for correcting allegations in the claim. In many small claims courts, the plaintiff is asked to complete a description of the plaintiff's claim on a local court form called the "plaintiff's statement," or something similar. After the plaintiff has completed this form, the clerk takes the claimant's handwritten description of the claim and synthesizes it into a short one or two-line typewritten statement that is put onto the official Judicial Council <i>Plaintiff's Claim</i> (form SC-100). The synthesized version of the claim may not accurately reflect what the claimant intended. The proposed form would permit a party to request correction of such errors. The form also would permit amendment as to the relief sought.</p>

Sometimes a plaintiff may have miscalculated the damages being claimed and wish to amend the claim to state the correct amount owed by the defendant. The plaintiff also could seek amendment requesting equitable relief.

The proposed form could benefit the defendant as well as the plaintiff. A defendant who has been given greater specificity about the plaintiff's case may (a) come better prepared to defend the claim at the time of the hearing or (b) allow a default to be taken. In small claims court the defendant does not file a written response to the plaintiff's claim, but only has to show up at the hearing to defend the action.

The form must be mailed or personally delivered to the other parties in the case before the hearing. The judge can grant or deny the request at the hearing, or continue the hearing.

The form does not address amendment after the hearing. As noted above, under Code of Civil Procedure Section 116.630 a request can be made to amend the defendant's name after judgment, and a defendant has a right to respond to such a request. Under these circumstances the small claims judge must schedule a new hearing and the clerk of the court must serve notice of the hearing on the defendant. The committee seeks comment on whether it should develop another form for ordering a new hearing to be filled out by the clerk of the small claims court for use in post judgment hearing amendments. The committee also seeks comment on whether there is a need to allow a claim to be amended post-judgment other than a name change.

The Rules and Projects Committee of the Judicial Council and some members of the Civil and Small Claims Advisory Committee are concerned that allowing amendments might undermine the purpose of small claims court for a simple "one shot" process of resolving claims. However, some courts have developed local open-ended forms for amending the claim. The committees invite comments on whether it is appropriate to institutionalize this practice on a statewide basis, or is it more appropriate to limit amendments to parties' names as authorized by Code of Civil Procedure section 116.630. The committee welcomes comments on these concerns. Proposed form SC-114 follows.

## Attachments

PARTY (Name and address):  TELEPHONE NO. (Optional): E-MAIL ADDRESS (Optional): FAX NO. (Optional):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	DRAFT 4 3/25/03
PLAINTIFF:  DEFENDANT:	
REQUEST TO AMEND CLAIM BEFORE HEARING (SMALL CLAIMS)	CASE NUMBER:

## REQUEST

1. I am the ☐ plaintiff ☐ defendant in this case.
2. I request that my small claims claim be changed as follows:
- a. ☐ amend parties' names (*explain*):
- b. ☐ amend amount owed (*explain*):
- c. ☐ amend other (*explain*):
3. a. I have ☐ mailed ☐ personally delivered a copy of this request on (*date*):  
to each of the other parties in this case at the following address (*specify name and address*):
- b. ☐ I have also notified each of the other parties of this request on (*date*):  
by ☐ telephone ☐ e-mail ☐ fax.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)